CASE AND COMMENT

"A sweeter peace this Christmastide
with war's averted folly."

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Case and Comment

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Louis Dunglas

FOREWORD TO DISCUSSION ON ADMINISTRATIVE LAW

(In February, 1938 Yale Law Journal)

By FELIX FRANKFURTER
Of Harvard Law School

Good wine needs no bush. But, since a cat may look at a king, one may, perhaps, express public appreciation of a solid contribution to scholarship.

Events, not men, have been the most powerful molders of Anglo-American law. To the extent that men have molded events, the great propulsions to legal development have come not from lawyers but from those outside the law who have changed the face of society, of which law is largely the mirror. Watt and Stephenson were much more responsible for undermining the dominantly feudal legal system expounded by Blackstone, than Bentham and Broughan. Edison and Ford have loosed forces more transforming to the law than did David Dudley Field and Mr. Justice Holmes. For the essential task of law—and its greatest triumph—is to devise peaceful accommodations, expressive of the dominant ideals of western democratic civilization, for the clash of interests and feelings in a dynamic society. Discordancy of law is largely due to the failure of legal processes to adapt themselves to changes in those interests and feelings. And this in turn is due partly to inertia and partly to lack of social inventiveness, but, above all, to the continuing habits of mind shaped by circumstances no longer relevant or only partly relevant. The erection of obsolete considerations into rigid rules characterizes all professions when pursued as ends in themselves, torn from the nourishing context of the society which they serve. But the consequences of such discordance between society and law are especially disastrous because of the peculiar role of law in society. These are generalities, but their implications at once summarize the history of modern Anglo-American administrative law and adumbrate its problems.

Since these issues touch off political feelings, they can, perhaps, best be studied in the unemotional atmosphere of their English manifestations. From which it will appear that administrative law is not the contrivance of self-seeking bureaucrats or the importation of a foreign institution by doctrinaire students. Science and technology cannot reshape society while law maintains its Blackstonian essences. "The most distinctive indication of the change of outlook of the government of this country in recent times has been its growing preoccupation, irrespective of party, with the management of the life of the people." Against the background of this basic alteration in the direction of British society the Macmillan Committee projected its classic Report on Finance and Industry. More recently Lord Macmillan took occasion to particularize this enveloping factor of Anglo-American law:

> "The statute book is always a good index of the economic and social policies of any period, and its recent contents evidence the extraordinary growth of what are now officially known as the 'Public Social Services.'
>
> "In contrast with former times Parliament now concerns itself with the regulation of the lives of the people from the cradle—indeed, even anti-natally—to the

> grave, and being unable itself to deal with all the details, it delegates to the Government departments the task of carrying out its policy by means of enumerable Statutory Rules and Orders. The most recent statistics (1933, Cmd. 4460) show that whereas the national expenditure under the Acts falling within this category, was in England, in 1900 31,703,000 pounds, the figure for 1931 (or latest available year) was 429,854,000 pounds."

Statistics are not succulent, but their meaning often reveals the nature of our sociological and legal problems. A few more figures may profitably be added to Lord Macmillan's. The public social service expenditure has increased from 0.19.2 pounds, per capita, in 1900, to 8.16.6 pounds, in 1934. "Between 1900 and 1934 total expenditure on the public social services increased nearly twelve times, and the expenditure per head of population increased over nine times."

But this is merely a chapter of a longer history. The pace of social legislation both in England and here has doubtless been greatly accelerated since the twentieth century; it did not begin in 1901. While our Department of Labor is about to celebrate its twenty-fifth anniversary, the completion last year, of Professor Sharfman's The Interstate Commerce Commission was an impressive reminder that the railroads have been under an administrative regime for half a century. Professor Goodnow had every justification for writing in 1893 that the "general failure in England and the United States to recognize an administrative law is really due, not to the non-existence in these countries of this branch of the law but rather to the well-known failure of English law-writers to classify the law." The Cullom Act of 1887 had a considerable body of forerunners in state legislation, and has itself become the precursor of a vast network of national regulatory systems covering almost every field of economic enterprise and extended by every President and every Congress.

Administrative law has not come like a thief in the night. It is not an innovation; its general recognition is. As a result, we have had haphazard evolution instead of self-conscious direction. To be sure, that has been true of other branches of the law. As late as 1887 Sir Frederick Pollock had still to prove against "the weight of recent opinion" that the "Law of Torts . . . is a true living branch of the Common Law, not a collection of heterogeneous instances. . . ." But the systematic development of the law of torts could prosper under the guidance of scholars like Ames, Holmes, Pollock, and Wigmore, without being distorted by political feelings. Since administrative law is enmeshed in affairs of government, the failure, with rare exceptions, to give it self-conscious direction has greatly hampered the effective response of society to some of its most exigent problems.

Traditional disregard of the existence of administrative law by bench and bar would have been sufficient restraint against its fruitful development. Unfortunately not only was it neglected, but, being deemed hostile to the Common Law, its very existence was denied. Few law books in modern times have had an influence comparable to that produced by the brilliant obfuscation of Dicey's The Law of the Constitution. Thirty years later, in his Law and Opinion in England During the Nineteenth Century, Dicey himself demonstrated the sociological sterility of his earlier chapter on the "Rule of Law." And ten years thereafter a course of decisions culminating in the Arlidge case made even Dicey face legal realities against which he was insulated in 1885. Generations of judges and lawyers were brought up in the mental

climate of Dicey. Judgments, speeches in the House of Commons, letters to The Times, reflected and perpetuated Dicey's misconceptions and myopia. The persistence of the misdirection that Dicey had given to the development of administrative law strikingly proves the elder Huxley's observation that many a theory survives long after its brains are knocked out. As late as 1929 Lord Hewart attempted to give fresh life to the moribund unrealities of Dicey by garnishing them with alarm. Unfortunately, the eloquent journalism of this book carried the imprimatur of the Lord Chief Justice. His extravagant charges demanded authoritative disposition and they received it. The Report of the Lord Chancellor's Committee on Ministers' Powers, and its two supporting volumes, Memoranda submitted by Government Departments and Minutes of Evidence, constitute, perhaps, the most illuminating analysis yet formulated of those processes of government which are the stuff of administrative law. After this Report it could no longer be gainsaid that controversies over a vast and sensitive range of human interest had long been committed, in the first instance and sometimes even in the last, to agencies other than the conventional courts, and had so to be committed if unchallenged social purposes were to be realized. At last real issues and most perplexing ones emerged. The wise extent of such commitments, how they were to be circumscribed, the means for their supervision, how to assure adequate administrators, the relation of administrative agencies to the legislature, to the judiciary and to the popular will—these were the problems that pressed for answer in myriad variations of their appearance. And there were no answers, certainly not out of hand. They had to come out of a critical continuous analysis of extensive experience and the gradual tentative synthesis of such analyses.

Dicey and Hewart crossed the Atlantic and they placed scholarship and authority behind uncritical American legal abstractions. Unfortunately the size, confusion, and complexity of the American legal scene, compared with the relative simplicity of the British situation, did not permit such an authoritative investigation and report as that made by the Lord Chancellor's Committee, whereby here too a quietus would be put on the false issues of The New Despotism, the mergence of an indispensable administrative law frankly recognized, and its real problems generously faced. More than forty years ago Ernst Freund expressed the hope that the term, administrative law, "will become more familiar to the public, and especially to the legal profession, than it is at present, and that the subject itself will become one of the recognized branches of public law." To this day administrative law has no rubric in the ordinary digests, and flickering cross-references to the subject first begin to appear in 220 United States Reports. Not until 280 United States Reports does the term appear to have established itself in the index. Yet the Supreme Court has in essentials been the ultimate dispenser of administrative law as truly as the great administrative courts of the Continent. For this I avouch several papers in this symposium. Digests and indices may not have caught up with fact, but the Supreme Court is certainly aware that a great stream of public law is flowing not entirely through the courts. Extra-judicial utterances on occasion vouchsafe us glimpses of judicial philosophy which seldom escape through the restraints of a collective opinion. In commenting on the work of his predecessor, Mr. Chief Justice Taft expressed with characteristic candor not only his

awareness of administrative law but also his understanding of its intimate relation to the workings of modern government:

> "The Interstate Commerce Commission was authorized to exercise powers the conferring of which by Congress would have been, perhaps, thought in the earlier years of the Republic to violate the rule that no legislative power can be delegated. But the inevitable progress and exigencies of government and the utter inability of Congress to give the time and attention indispensable to the exercise of these powers in detail forced a modification of the rule. Similar necessity caused Congress to create other bodies with analogous relations to the existing legislative, executive, and judicial machinery of the Federal Government, and these in due course came under the examination of this court. Here was a new field of administrative law which needed a knowledge of government and an experienced understanding of our institutions safely to define and declare."

And the present Chief Justice was one of the first to recognize that administrative law arose out of

> "a deepening conviction of the impotency of Legislatures with respect to some of the most important departments of lawmaking. Complaints must be heard, expert investigations conducted, complex situations deliberately and impartially analysed, and legislative rules intelligently adapted to a myriad of instances falling within a general class."

After he became Chief Justice but before any political controversies were on the horizon, he indicated the reach of administrative law when he said: "A host of controversies as to private rights are no longer decided in courts."

Ultimately, then, the concerns of administrative law are not less than the power and resourcefulness of democratic constitutional government to fashion instruments and procedures capable of coping with some of the most perplexing but exigent problems of society. Legislative policies, under modern circumstances and in their different fields of operation, must, as the Chief Justice has recognized, be given concreteness and adaptation through administrative agencies. Considerable areas of discretion must inevitably, though in varying degree, be committed to these agencies, and, like all organisms, they must in part evolve their own procedure. Therefore, as Mr. Justice Bradley as early as 1890 acutely discerned, the development of American administrative law involves a potential conflict between legislature and the judiciary. In the latters' keeping are precious ultimate interests; but not less so are those entrusted to the administrative by legislatures. In humble realization by each of their respective functions lies in large measure the trembling hope for the maintenance of our democracy.

THE *part of law, then—law honored and respected and alive —is the high function of happiness and peace, of security and honor, of good faith and justice toward which mankind will ever strive. It is the path which guides the world toward the ever-nearer, ever-receding goal; the goal which was vaguely the hope of men in the dim days before history began; the goal that humanity has envisioned as peace on earth, good will to men.*

—DEAN PAUL SHIPMAN ANDREWS, in Nov. 1938 American Bar Ass'n Journal.

PRACTICAL SUGGESTIONS FOR YOUNG LAWYERS

By C. F. LACEY

Of Monterey California County Bar

(Condensed from State Bar Journal of California March and June 1938)

After a trial practice extending over a considerable period of time, I have thought that it might be helpful to some of the newer members of the fraternity, to pass on to them the suggestions which follow. While I am well aware that many of them do not possess the merit of novelty or originality and that some of them may be debatable and others perhaps trivial, I know that an earlier acquaintance with them on my part would have eased me over a number of bad spots, some of which were quite rough. As a large part of the general public estimates a lawyer's professional capacity by his ability to speak in public, and since the young lawyer may expect to be pressed into this service, I am venturing a few suggestions thereon:

1. Never, upon any consideration personal to yourself, falter in guarding the interests of your client.

2. Most questions concerning legal ethics may be answered by consulting yourself.

3. In advising a client upon a question of law, be as positive as you can be, for he dislikes any manifestation of doubt on your part.

4. A position sustained by the most convincing logic must fall in the face of a statute to the contrary. Don't endeavor, by mere argument, to brief a section out of code.

5. A reputation for effecting compromises without suit will not lessen the business which will come your way.

6. Take an active interest in political affairs, but do not aspire to a public office which is not in the line of your profession, and it is sometimes wise to forego even the others.

7. A well-earned reputation for diligence, quite apart from great ability, will aid much in acquiring a clientele. Do not wait until the last day in the afternoon to serve or file a necessary paper or to do a necessary act.

8. Do not plunge deeply into debt in acquiring long shelves of law books for which you will likely have no immediate use, for a load of debts may prompt you to stretch or liberalize your code of professional ethics. Aside from the codes, citations, local digest and the reports of your own higher courts, let the public law library serve your present needs.

9. A law partnership has advantages and disadvantages, but practicing upon your own account is the surest way of acquiring a clientele that you may hold and call your own.

10. It is desirable to avoid engaging in the business of collecting small bills, for in some distant year one or more of the resentful debtors, long since forgotten by you, may face you from the jury box.

11. A lawyer may be excusable for an error with reference to substantive law, but his mistake as to a settled rule of practice is unpardonable.

12. After an exhaustive examination of the American Digest, the National Reporter System, and the text books, you may find your problem solved by a provokingly short section of the Civil Code. Go first to your codes and the decisions thereon.

13. Keep abreast of the decisions of the local higher courts. The ad-

vance sheets possess the additional advantage of reaching you in such small installments as to admit of reading them as they arrive.

14. Do not refuse to represent an accused because of the enormity or atrocity of his offense. Such cases usually attract much public attention, and if the case be well handled, you will gain in prestige without regard to the result in the particular case.

15. Some clients will not disclose to you the whole truth but will purposely conceal from you matters prejudicial to them. Impress upon your clients the necessity of a full disclosure of the facts, for in the absence thereof you are likely to meet with some surprises at the trial.

16. If a case may be presented upon different theories, it is sometimes very important to adopt the best one.

17. It is of great advantage to win your case in the trial court, and in the course of your practice, you are sure to learn that if you had devoted the same care and industry in preparing for trial that you have exerted in appealing and briefing a lost cause, the result might well have been different in the trial court.

18. Diligently endeavor to have your pleadings correct in the first instance. To be required to amend may reflect upon your professional ability. In the case of a complicated pleading, lay the draft aside temporarily and review it later on.

19. Never, under any circumstances, plead matters which are provable without being pleaded. It is very much like "leading with your chin."

20. Block out the matters you are required to prove, and assure yourself that the evidence by which you propose to establish them is legally competent for the purpose.

21. While it is no doubt gracious to laud the ability and integrity of opposing counsel, it is of very doubtful wisdom, for if the jurors believe him to be such a prodigy as your praise indicates, they may conclude that perhaps he is right in the instant case and you wrong. Better say nothing about him.

22. Never assume that opposing counsel knows less of the law than you do, but don't be overawed by the professional eminence of counsel opposite, for if you have prepared your case properly you know just as much about the law as he does, and upon a debatable question of law (and there is a "glorious" uncertainty about much of it), the opinion of a lawyer occupying a lower bracket, who has thoroughly examined the question, is to be preferred to that of one in a higher bracket, who has made no such investigation.

23. Never take a default against a brother attorney without informing him in advance of your intention to do so.

24. Unless some clear advantage is to be gained, don't waste time and labor in presenting motions to quash, motions to strike and special demurrers, and don't spray the record of a trial with trifling objections to testimony.

25. Be very cautious about asking an opposing witness to give his reasons for his particular conduct, as it affords him an opportunity to bring in hearsay and irrelevant matters which may prove very prejudicial to your case.

26. In a jury case the impeachment of a witness by proof of his conviction of a felony is of doubtful efficacy. Having paid the penalty for his transgression, such proof is well calculated to arouse the sympathy of some jurors.

27. If you believe an opposing witness has told substantially the truth, be chary of cross-examination, if you cross-examine at all.

28. In the defense of a case of homicide, brave and not timid men are to be preferred as jurors, and in the defense of an elderly man accused of crime, young men are to be preferred as jurors, and the converse where a young man is defendant.

29. A jury made up of men of varying ages, creeds, politics, nationalities and occupations sometimes finds it difficult to agree upon a verdict.

30. A jury reacts very unfavorably to a charge of fraudulent conduct, and will sustain such charge upon less evidence than would suffice to support a different issue.

31. In a will contest the verdict frequently reflects merely the opinion of the jurors as to the justness of the will. Do not spare family skeletons in showing to the jury that, all things considered, the will is just in its provisions.

32. Do not abandon a cause because of lack of confidence, for the judge may hold it to be a very good cause, and, after all, it is his opinion, and not that of the advocate, that counts.

33. In civil cases do not require your adversary to prove what you know he can prove.

34. Stipulate the facts, but in all your stipulations have a care that they do not go beyond what you intend.

35. Do not attempt to handle a case you do not fully understand, nor undertake practicing before a board or tribunal with whose rules of practice you are not familiar.

36. If you represent an insurance carrier, instead of allowing opposing counsel to get the fact of insurance in the minds of the jury by the roundabout methods usually pursued, it is best to state the fact to the jurors upon their examination and then by a direct question to each juror put him upon his honor in dealing with that feature.

37. It is not always possible to detect the false witness, but the "swift" witness who manifests a desire to reel off his story without waiting for questions; the one who holds his hand to his lips, or who indicates that he is being bored, by gaping and yawning, and particularly the witness who precedes his answers by a repetition of your questions, are to be closely examined.

38. Of course, Biblical and classical quotations help to adorn and enforce an argument or address, but in all cases be sure of your quotations. Do not say, as did a famous California lawyer, "Oh, Consistency, where is thy jewelry?", nor as was said by another, "Gentlemen, the argument of learned counsel reminds me very much of the words of one of the classical poets; for the moment the name of this poet has escaped me, and I find myself unable to quote his words, but if I could quote them you would see that they are apropos."

39. A practical knowledge of stenography may be easily acquired while you are waiting for clients, and it will save you a lot of drudgery.

40. Many impromptu and extemporaneous addresses are likely made with fixed ammunition. If you are unexpectedly called upon to speak in public, you can get by with very little, but if you are on a program for a set speech, you owe it to your audience, as well as to yourself, to prepare something that is worth listening to.

41. If you desire to memorize an address, draft it upon sheets of various colors, as this will aid the memory. Upon reviewing it, if you come across a passage that you think is particularly fine, strike it out, for it will hardly appear so excellent in later years.

42. If you find it difficult to "think upon your feet," you will get some

assurance by placing a hand upon the edge of a table or the back of a chair.

43. In an argument or public address, never tell stories reflecting upon yourself.

44. In dealing with figures, unless exactness is required, always use round numbers; otherwise your listeners, in an effort to catch the last and unimportant figures, may lose sight of the first and important ones.

45. In argument or public address it is advisable to present your views and suggestions in various forms, and never to use big words to express small ideas.

46. Avoid the constant repetition of the same word, or of words having the same sound, as such repetition seriously detracts from the force and elegance of speech. Stress and prolong the vowel sounds; the consonants will take care of themselves.

47. In addressing a public audience, endeavor to avoid the recognition of any person, as such recognition will distract your attention.

48. Forceful speech requires a voice of depth and volume and a fairly deliberate utterance. To enlarge your vocabulary, devote fifteen minutes each day to the study of synonyms, and to strengthen your voice, try reading aloud an hour every morning for a year or two.

49. When you have nothing else to do, devote your time to a study of the law of contracts and the law of evidence.

50. If, after some experience, you find that you really do not like the practice, and do not feel keen to go on with the drudgery which is essential to success in the profession, you had better try something else, for in the absence of much hard work, you are likely, twenty years hence, to occupy the same position in the profession that you now fill.

51. If you merit the confidence of the judge, he will likely sign your orders without reading them.

52. Advance knowledge of your plans of attack or defense, by counsel opposite, may do your cause much harm. Do not broadcast.

53. Make no attempt to advise as to the law, until you are in possession of all the facts.

54. It is unwise to assume that any court (trial or appellate) knows all of the law of your case.

55. Court-room confidence comes, and comes only, from a knowledge of the law of your case, the rules of evidence applicable thereto, and a thorough familiarity with the rules of trial practice, many of which may be found only in decisions of the higher courts.

56. Do not wait until you get into the court-room to learn that the statute upon which you rely had not been enacted when the assumed rights of your client attached, or that you have been depending upon a statute which has been repealed or amended, and never stop with mere reading of a law if there are decisions which interpret it.

57. If you do not prepare along technical lines, for the cross-examination of an expert witness, he will have you at a great disadvantage.

58. If you represent one who is accused of wielding a knife, you should have an extra care, for while jurors sometimes appear rather indifferent to the manipulation of a pistol or shotgun, they, except those of Spanish descent, react very unfavorably to the use of a knife.

59. If you represent a defendant charged with trifling with the affections of a member of the gentler sex, do not make any extra effort to obtain jurors from below the Mason & Dixon line.

60. Do not grow careless in the use of law language; your client may be

executor of a will but not of an estate; he may give an undertaking on appeal but not an appeal bond; a will is probated and an estate administered, and while courts and other tribunals render decisions and pronounce judgments, it is only juries that return verdicts, and you should not regard a counterclaim and a cross-complaint as the same thing. His Honor is judge of the superior court, and not superior judge.

61. Attending trials and observing the court-room technique of good trial lawyers will acquaint you with many "nice sharp quillets of the law" not to be found in the books.

62. The opposing lawyer will estimate your ability by your pleadings, which are an infallible test.

63. You will find the more experienced members of the bar ever willing to aid you on doubtful points. Do not let pride deter you from seeking their advice.

64. If you do not acquire an extensive knowledge of the substantive law during the early years, you will hardly have time to do so in the midst of an active practice.

65. In the trial of contested cases it is sometimes impossible to avoid giving offense, and if you are too tender-hearted in this respect, you should leave the trial work to other hands.

66. The Irishman is believed to be the most sympathetic juror, and the Latins are inclined to be liberal. Many individuals from more northern latitudes seem quite unable to comprehend the doctrine of "reasonable doubt."

67. An unsuccessful attempt to impeach a witness on account of his reputation for truth reacts very unfavorably upon the side making the attempt. Do not try it unless you are sure you can make it stick.

68. In the impeachment of a witness by proof of his own conviction of felony, the better method is to introduce the judgment roll, rather than to humiliate him by a direct question. Some jurors resent the latter method.

69. A damaging fact from your own witness will do least harm if brought out by you in direct examination.

70. Physical evidence produced or identified by a witness is apt to be given undue weight if it be not borne in mind that its value as evidence depends altogether upon the veracity of the witness.

71. In the absence of a preliminary examination, many witnesses find it very difficult to testify clearly from maps and diagrams.

72. Do not hope for any aid from an adverse witness, for his general inclination is to "make good" to the side which calls him, and he is more apt to stretch his testimony in favor of that side, and thereby justify his being called, then he is to aid you.

73. The impressive number of appeals which have been won and lost upon questions of practice must convince you of the importance of this branch of the law.

74. Be candid, but never in the presence of court or jury manifest any lack of confidence in your cause.

75. Do not expect a member of the gentler sex to be able to testify, with even approximate accuracy, about distances, nor any witness to testify very accurately about time.

76. In a jury case endeavor to examine your witnesses so fully as to render it unnecessary to recall them.

77. A neglect to fully examine and cross-examine your witnesses before trial is almost certain to leave important facts undiscovered.

78. Be respectful to the court, but never upon any consideration personal to yourself hesitate to assert and maintain what you conceive to be the rights of your client, however impatient the court may appear to be.

79. Many juries pay more attention to the equities than they do to the law, and they will distort and frequently ignore the law, in order to do what they conceive to be substantial justice.

80. If you know the substantive law of your case, and hence the rights of your client, you should have no difficulty in pleading the ultimate facts upon which these rights depend. Ultimate facts are logical conclusions drawn from primary facts evidentiary in character, while conclusions of law are legal deductions which the law draws from a given or assumed state of facts; therefore, broadly speaking, if recourse must be had to the law in order to ascertain the meaning or the scope and extent of an averment, it must be regarded as a conclusion of law, and not as an allegation of an ultimate fact. (Consult 71 Cal. 275.)

81. Reducing stipulations to writing avoids misunderstandings and makes for the protection of both parties.

82. In argument or public address it is logic and earnestness, and not rhetoric or the marshaling of fine sentences, which produce conviction.

83. If the only question involved is the sufficiency of the evidence, and there is a substantial conflict, do not go through the senseless proceeding of appealing. Whether there is any evidence to justify a verdict or decision of course presents a question of law, of which alone the higher courts have jurisdiction upon appeal, but the moment substantial evidence appears in support there is no longer any question of law involved, and the higher court, instead of affirming the judgment, might very properly dismiss the appeal for lack of jurisdiction.

84. In your briefs upon appeal do not scatter or pot-shot, for you will find it difficult to convince the higher court that all of the rulings of the trial court were erroneous. Stress your strong points and make them few in number.

85. If you expect to attain a commanding position at the bar, and at the same time avoid the drudgery that every successful lawyer has undergone, your venture is certain to prove a total loss.

86. Much of the grief of trial judges and not a few of the delays of the law are due to faulty pleadings and attacks thereon.

87. You can better afford to donate your services in winning an important case which has attracted public attention than to receive a handsome fee and lose the same case.

88. Questions concerning the admissibility of evidence come up without warning, and hence it is that a knowledge of the law of evidence is the trial lawyer's strongest armor.

89. If you are disposed to submit a case without argument, whisper the suggestion to counsel opposite. Do not bawl it out for its hoped-for effect upon the jury, as this savors of pettifoggery.

90. On the witness stand for the first time, and facing a crowded courtroom, some very intelligent witnesses seem almost to forget their names. Such witnesses should be composed by a few commonplace questions as to residence, occupation, etc.

91. The trial practice is the only branch of the profession that has any real "kick" to it, but generally speaking it involves the hardest work and yields the poorest pay.

92. It is unwise and may prove dangerous to engage in the work of a trial lawyer if you have the slightest defect of hearing.

93. Do not accept a private trust involving the handling of trust funds, unless you are prepared to undergo the grief that may come from a re-

(*Continued on page 16*)

THE FIRST DAMAGE SUIT IN AMERICA

GREVILLE POOLEY *vs.* CICELY JORDAN

By JUDGE THOMAS B. ROBERTSON
City Point, Va.

THE earliest suit for damages for breach of promise occurred in the locality of City Point, Virginia, in the present county of Prince George.

It was a most sensational affair, and was brought by the Reverend Greville Pooley, the Minister of the local parish, against Cicely Jordan, the widow of Samuel Jordan of Jordan's Point.

Samuel Jordan died late in March, 1623, leaving his young widow Cicely and two children. Jordan was a man of some consequence in his day. He came to Virginia in 1610 and settled at Jordan's Point, near this place and was a member of the first House of Burgesses in 1619, from this locality.

Three or four days after his death, Reverend Pooley, the minister, talked with a friend, Captain Isaac Madison, about marrying the widow, and a few days later went to see her himself, and he said he was accepted, and asked his friend Madison to go with him to see the widow, and then told her he would contract himself to her in these words, "I, Greville Pooley, take thee Cicely to be my wedded wife to have and to hold, till death us do part," and repeated the same words for her, but the witness said he did not hear her assent, but they drank together and he kissed her. She asked that it be not published so soon, but Pooley could not keep it, and she said of him that he would fare better if he talked less, and turned against him.

She immediately afterwards engaged herself to William Farrer, another suitor, and married him a little later.

Mr. Pooley then brought suit against her for breach of promise, the first action of the kind in any court in this country. Warrants were issued against Mr. Farrer, to bring in the account of Mr. Jordan by December, 1623, and another warrant for Mrs. Jordan, ordering her to see that Mr. Farrer put up security for the performance of her husband's will, showing something of the issue involved.

The case was started following this action and a number of witnesses of this locality appeared in the case. It was based on the following statements. Nathaniel Causey, a Gent. sworn and examined, said that he had seen Mr. Farrer kiss Mrs. Jordan, but no other familiarities between them at the time.

At the hearing, Mr. Greville Pooley, minister, gave forth that Mr. Farrer and Mrs. Jordan lived scandalously together, witness Mr. Causey, but conceiveth it scandalous for Mr. Farrer to break the order of the Court in that he was seen to take diet in Mrs. Jordan's house and in her company without someone else in the place being there by order of the Court, which was made in the Court of the western district here at City Point, where the court had just been started, which was the first of the year, 1624, and this was one of the first cases before it.

The case was then taken up to the General Court at Jamestown, and continued to November following. In the meantime the Governor and Council issued a proclamation against women engaging themselves "To several men at one time."

The Pooley case was referred to the office of the company in London for an opinion on certain points of law.

The case, was, however, heard as to the facts presented by Reverend Pooley, but he had not been able to substantiate his charges against Mrs. Jordan and Mr. Farrer by the witnesses he had called in the case. Before hearing from London Rev. Pooley had been prevailed upon to enter the following order:

"A copis of Mr. Greville Pooley, this release concerning Mrs. Cysily Jurden. I Greville Pooley preacher of the worde doe for my parte freely and absolutely acquitt and discharge Mrs. Cycilie Jurden from all former contracts promises and conditions made by her to me in the vow of marriage and doe binde myself in five hundred pounds Ster. never to have any claim right or title to her, that way, in proof thereof I have here unto sett my hande and seal the thurde dye of January—George Pooley Cler —sealed. Subscribed, sealed and delivered in the presence of Nathaniel Causey, Richard Biggs.

Thus ended the noted case which had attracted wide attention in the colony of Virginia, along the James. It was followed up by several disputes between Rev. Pooley and Thomas Paulett in 1625, in which the minister said Paulett had lied to him to his great detriment.

Among the witnesses to this contest were, Robert Partin who heard this dispute, and Ensign Francis Eppes, Samuel Sharpe and Lieutenant Thomas Osborne.

The General Court fined Paulett five hundred pounds of tobacco, and directed him to ask forgiveness of Reverend Pooley, and the latter should ask forgiveness of his congregation for his actions in this case.

All of the parties to these actions were settlers in the City Point section. Farrer lived at Farrer's Island between this place and Richmond. He had a granddaughter named Cicely. Nathaniel Causey lived at Causey's Care, later "Carson's," the old Bland home, Francis Eppes at City Point and the Island. Robert Partin was one of the first settlers at City Point. Samuel Jordan lived at Jordan's Journey or Jordan's Point, about five miles away, and Captain Madison was a near neighbor of Jordan.

Reverend Pooley left this locality a few years after this scrap, but the other parties have all left descendants in this state and locality.

PRACTICAL SUGGESTIONS

(*Continued from page 14*)

sentful beneficiary who fails to appreciate a conscientious performance of the trust.

94. The practice of criminal law is the easiest branch, but a permanent clientele is based upon civil practice only.

95. Any difficulty you may encounter in drafting a complaint or special defense will disappear before a fuller knowledge of the substantive law.

96. Do not be discouraged because you are not immediately intrusted with important legal matters, for men of affairs hesitate to place them in inexperienced hands, but you may rest assured that when you have shown yourself capable of handling important legal business, you will get your share of it.

97. Eight o'clock in the morning is a splendid hour to reach your office, and a surprising amount of work may be done on holidays.

98. In addition to your other general reading, go through the works of Daniel Webster at least once a year, and do not overlook the volumes of Shakespeare.

CITY OF BUFFALO *v.* COTTLE

162 Misc. 926
297 N. Y. S. 192
Summers, Justice.

THE city comes asking the court to award it a penalty against the defendant for the violation of a municipal ordinance, the gist of the offense being that the defendant is permitting to remain, on premises owned by him, the relic of a once proud dwelling house, now so far advanced in decrepitude, as to be pregnant with divers dangers to the vicinage.

The problem involved here arises often in our city and seems to warrant an examination.

The defendant admits the tottering condition of his house. In fact the pictures in evidence portray a scene of Belgium-like devastation, made familiar during the Great War.

The defendant tells how this came about, thus:

Up to 1932, the house so well performed its social function as a shelter, that it commanded a rental of $90 a month. The tenant about that time departed, and the house became vacant. And from this hour on, this vacancy approached, closer and closer, to a vacuum; bit by bit disintegration progressed, doors vanished, window sashes disappeared, bathtubs, despite their cumbersome nature, melted, seemingly, into the circumambient air. Though the police were repeatedly notified, no gang killing or "bookie" operation ever more completely baffled them. All the modern ultra scientific paraphernalia of crime detection proved futile in revealing the reason for, or prevented the disappearance of, so seemingly stable a thing as this house. A student of the psychic might well find sustenance for this belief in the occult powers of ghostly denizens of vacant houses, while a highland Kelt might lay it to malicious fairies; but to a student of the prosaic, however, it seems a perfect example of police phlegmatism.

Losses of this nature suffered by landlords, predicated on police indifference, probably exceed the combined depredations from all other forms of crime in the community, and the most mysterious thing of all is that it is suffered, as one of the unavoidable slings and arrows of outrageous fortune, by our patient taxpayers.

The city, in taking over the conduct of a department of police, has assumed what has always been the prime duty of government, the protection of property. While the multiplicity of duties undertaken by the city may explain the diversion of the police from its chief purpose, it can in nowise divest it of its duty in the circumstance. One is reminded here of the story of the housewife so interested in her extra mural efforts to save the nation, that neither the chil-

dren nor the dishes were ever washed at home.

Certainly the city, having created a condition by the neglect of its own police department, cannot be allowed to recover for the result of its own obvious shortcomings.

Let the proceedings be dismissed.

THESE "MINIMUM SENTENCES"

By William M. Blatt of Boston.

"The worst men make the best clients."

"There are only two kinds of women clients: those who pay liberally and those who complain to the Bar Association."

"A good judge is like a good steel blade, easy to bend, but sure to come back quickly in a natural position."

"The average man thinks lawyers are dishonest because if he were a lawyer he would be dishonest."

"Every compromise is an injustice."

"Doctors, ministers and lawyers are true to the ideals of their professions only when they try to eliminate themselves."

"A lawsuit like a surgical operation, should be a last resort; at best it is dangerous; it often does more harm than good; and it always leaves scars."

"Movie lawyers usually seem unreal because they appear to be interested in their cases."

"The able judge is not one who follows the decisions but one who goes ahead of them."

"A suit is a ship; the lawyers are waves opposing its motion; the winds are laws driving it in various directions; the judge is the captain; and justice is the North Star."

"He who would travel from law to logic must jump many fences."

"A judge should feel that he is always under suspicion—and he should be."

"Honesty and law are neighbors, but they are not on the best of terms."

"Speak louder, little citizens! Some of the judges are hard of hearing."

Law Society Journal of Massachusetts

"ALL THE SAME TOAST"

The following will was offered for probate in Winnett, Mont.

Contributed by H. Leonard DeKalb, Lewistown, Mont.

I ANTON HARDBREAD, give my wife Mache, by my Will, or I give Order, all things which belong to me which we made together or what we are now using during our lifetime all that I am worth any place.

If I lost myself some place I give to her all that I have — all money which I have in cash and all that is in the Bank or which some one owes me, and all money coming from the sale of my farm, papers in Commercial Bank in Kemzek. She is to collect all my bills after I am dead, and she is to get all which if I still lived we would use together.

I, Anton Hardbread, give my wife Mache a will, or give her an order, if I some place die I give all money, all papers or documents. While I live we use it together and after I die she gets all. After I die I give all money for which we have documents, before I die we use it both and after I die she gets all.

(*Signed*) ANTON HARDBREAD.

TO A SCOTT—

Mr. John H. W———, Solicitor,
21 Kirkgate, Dumfermline, Scotland.
IN RE: 13–15 Balgonie Place, Markinch
Contributor: T. S. Silvers, Seattle, Wash.

I ACKNOWLEDGE receipt of your letter of Dec. 8th, relative to the letter from the Clerk of the Town, demanding among other improvements, the installation of a hot water supply

for the bath in these houses, and note that you consider the action of the authorities in making such a demand, *ultra vires*.

I have no doubt but that you have been able to cite Scotland authority justifying your position. However, while it is without doubt a rather far-flung and extravagant thing, we have in this country somehow developed the idea that hot water is a necessary essential to a good bath, and the bathroom fixtures and equipment are so made as to accommodate themselves to this idea.

I can however, readily see how water for the bath could be heated on a stove in a separate vessel, and poured from thence into the tub, creating the same result in a measure, as though it flowed thereinto from a faucet; but there remains the possible cooling off of the water perhaps before one had quite finished the bath to his satisfaction, thereby giving rise to an impulse to add hot water. One would much dislike to emerge from the bath and stand beside the kitchen stove whilst additional water were heated, or even in case the added water supply were in readiness for pouring, it might prove embarrassing to the bather to amble forth disrobed, and carry in the extra water. This objection could be overcome by the hiring of an attendant to manage the water facilities, but quite naturally two attendants would be required, one for the men and another for the women bathers, all of which makes the operation rather too expensive.

So may I suggest, Mr. Wright, that despite the seeming extravagance and lack of dire necessity for same, you procure estimates for the cost of installing the hot water pipes, and while you are at it, why not also include the demanded facilities for artificial lighting? If the cost is not out of proportion to the probable increased value of the property, proceed to make the demanded improvements. These added features should be called to the attention of tenants, and I incline to believe a slight increase in the rentals might even be made.

DON'T TELL THIS TO NOBODY

From a Banker's File.

Contributor: Geo. P. Willis, Jr., El Campo, Tex.

Ask I must drop you a few lines. I want have this fixed different cause I can't come over there. Please don't give my husband so much money at so often. He draw out money and drink it up with his friend, ——— ——————— and then he give checks for nothing. And when I want georcies he tell me he can't get money and I got three children on hand. And then after he drink up money what is I'm gone do. Alway give him much as we buy cause he don't care for money when he can borrown from somebody.

STOPPAGE IN TRANSITU

Contributor: Charles Ledwith, Lincoln, Neb.

This incident occurred in the classroom at the University of Nebraska in a class in Sales under Dr. Lawrence Vold about two years ago. The topic being considered was Stoppage in Transitu and it is necessary at the expense of brevity to say that one of the members had just read a brief of a case as follows:

Pg. 715. In re CHARLES T. STORK & CO. C. C. A. U. S. 1921. 271 F. 279. Bankrupt purchased goods in question, terms FOB N. Y. to be delivered to the Trans-Ocean Forwarding Co., a subsidiary of the bankrupt. No other instructions were given to the vendor. The goods were delivered in accordance, unmarked as to destination, freight prepaid, straight B/L to bankrupt, N. Y. Forwarding company marked goods (mule shoes) for

the consignee at *Virgin Islands*. Goods lay in warehouse of forwarding company when insolvency supervened. Vendor served notice of stoppage and filed petition for delivery of the goods to it. Delivery to vendor awarded in Dist. Ct. *Held:* Reversed. R.D.—If the goods have come into the constructive possession of the buyer by delivery to his agent, not a carrier, the transit is ended and the right of stoppage has expired.

Dr. Vold detected a little confusion in my corner and he inquired if I did not agree with the holding in this case. I replied, "Oh yes, the outcome is correct, but I think other grounds exist upon which this case should have been decided." "What are those grounds?" the professor asked. This is the part that took nerve: "I think that the correct reason for this decision is that even to the Virgin Islands delivery by Stork cannot be stopped."

PUNISHING THE INSANE

Contributor: Joseph Monette, Methuen, Mass.

Some thirty-five years ago a judge (a good lawyer) told this story:

His predecessor on the bench had been a ranchman who knew no law at all. One day, another ranchman from the neighborhood burst in the town on his bronco, wildly firing his two guns. Fortunately, he was firing in the air and did not hurt anyone. He was arrested and locked up. He appeared in court the next morning for arraignment. Some attendant intimated that the man was insane. Thereupon the judge continued the case one week and instructed the clerk to write to a doctor for an opinion. The doctor lived in a town twenty-five miles away. On the day of trial, the clerk produced a letter from the doctor to the effect that if what the clerk had written to him was true, the defendant was undoubtedly insane. Thereupon, the judge fined the defendant $25.00 and costs. The defendant pulled out a role of bills, paid the fine and costs, the sheriff gave him back his guns and he walked out.

LETTER RELOCATING COUNTY HIGHWAY

To the County Court of Wilson County:

To build a bee-line road from Mt. Juliet north to the highway would cause irreparable damage to Mr. B. F. E.————, by destroying his well and making spring water inexcessible. It would ruin his farm.

Please don't do it. Follow the Golden Rule. It will pay to do so. There is no reason for building a bee-line unless to encourage foolish motorists to speed away their lives, and the lives of others.

God loves a curve. The line of beauty is a curve. The sun is round; so is the moon; so is the earth. The Cumberland River don't run a straight line; no other river does. This road from Mt. Juliet to the highway should hurt no one but bless all. You can build it as crooked as the Cumberland River; as crooked as the road from Jerusaleum to Jericho; as crooked as the road that the Israelites took from Egypt to the Promise Land.

Gentlemen, build it, but build it crooked and beautiful and helpful to all. You will save life; save money; save happiness, save Burkett Everette and help everybody concerned; by building this road along the old trail; as crooked as the old trail. Make it crooked and beautiful and bless everybody. If by its being crooked, some half-drunken motorist kills himself, why you can weep at his funeral that he allowed the devil to deceive him; not you.

Gentlemen, please answer me that you will heed this plea; and thus please God and do your duty. May devine wisdom guide you.

REPLY TO A THREAT FOR SUIT

(Note the Friendly Atmosphere)

Contributor: L. M. Lauer, Plymouth, Ind.

Dear Ollie:

I have just completed a letter to our mutual friend, Hank, in which I told him that I will be able in a short time to pay you all that you have coming to you on my account. I have arrangements nearly completed whereby I will have the cash for you instead of another note. I know that you will appreciate the cash, Ollie, and there is no one I would rather pay it to than you. You and I have some things in common one of which is that we are both poorer than the devil. However, let me call your attention to one thing, that you overlooked; you demanded that I pay you what I owed you, which ordinarily is both fitting and proper, but you went a step further and employed an attorney to sue me if necessary, and right there is where your skimmer leaked, because, my dear brother in poverty, if you had brought suit I would had to have taken refuge in the bankruptcy law and the judgment you would have gotten would not have been worth the paper it would have been printed on. You would then have had something to lay up in your archives as a remembrance of me rather than something of the metallic kind that will jingle in your pocket and pass for face value at the bank. I told you some little time ago that I would pay you before the first of the year and I meant just that little thing. It would have been foolish of you to have thrown away good money after bad and I am mighty glad, that such will not be the case. I can well remember that you have accommodated me at various times and your kindness was not forgotten. It has meant a big effort for me to raise this money but you have it coming to you and shall have it.

It will be very likely that Hank will call you up and tell you that he has a letter from me and that I am to make full settlement within a short time. You can tell him that you too have word to that effect. As soon as I have completed details of this deal of mine, and I think it will be sometime Monday, I will let you know. In his last letter Hank accused me of passing the buck and took occasion to inform me emphatically that he meant business and would sue at once unless I sent the money by return mail. The poor dear probably thought that I had a mint in my basement and could turn out the money over Sunday. You can tell him for me, Ollie, that he makes a better Lawyer than a promoter for road map advertising. He is a good fellow, a fair billiard shot, a hard worker, but a snotty letter writer.

Luck to you, Ollie, and may the ensuing year bring you an abundance of prosperity and much happiness,

Very truly yours,

A HARD WORKING CROSS-EXAMINER

Contributor: Homer Kyle, Lincoln, Neb.

THE following cross-examination of a witness occurred in a trial recently held in the District Court of Lancaster County, Nebraska. The witness had qualified himself as an expert public accountant, and was obviously anxious to impress the court with his erudition. The cross-examination was conducted by Mr. James L. Brown of the Lincoln, Nebraska Bar, and is worthy of preservation as a little classic in the art of cross examining this type of witness.

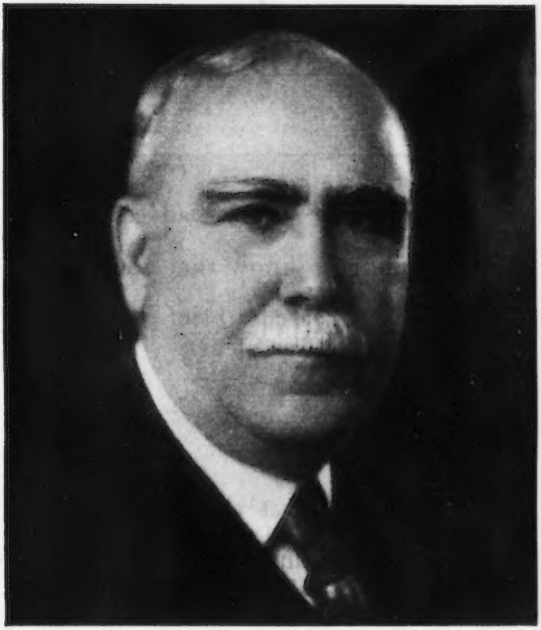
Q. This record you want to introduce is made about two-thirds in pencil and one third in ink. How did that happen?
A. The pencil is purely the detail breakdown of the account.

Q. Of course, I don't know what you mean by "break-down." I can't understand that language so your answer means nothing to me. Now I ask you why you have two-thirds in pencil and one-third in ink?
A. To expediate identification of the charges.
Q. To expediate identification of the charges? You mean expedite, don't you?
A. Alleviate.
Q. To alleviate?
A. Yes, sir,—the identification of the charges.
Q. To alleviate identification of the charges. I believe the word you mean is "consecrate," isn't it? Isn't that the word to use in that connection?
A. No. That is what has been attempted with these records.
Q. You mean to consecrate them?
A. Yes, sir.
Q. What is the best way to consecrate a record?
(No answer)
MR. BROWN: May I have an answer to my question?
By the COURT: Yes.
Q. What is the best way to consecrate a record?
A. Why, being certain of foundation.
Q. And when you are certain of a foundation it is consecrated or alleviated,—which?
A. I would say it was alleviated.
Q. Alleviated,—not then consecrated. What do you mean by "consecrate"?
A. Technical dictionary definition I do not have before me.
Q. I am not asking for that. I am asking for your definition.
A. To hold with great respect.
Q. To hold with great respect is to concentrate, is it?
A. No. To concentrate means to give a great deal of thought.
Q. What does consecrate mean?
A. To hold with great respect.
Q. Consecrate means to hold with great respect?
A. Yes.
Q. What does alleviate mean?
A. Well, in the layman's terms, you might say to make easier.
Q. To make easier means to alleviate?
A. Yes.
Q. So the pencil marks then expedite the consecration of the alleviation, is that right, generally speaking?
A. Yes, sir.

THE PAST IS FOUNDATION—THE FUTURE EXPERIMENTATION

"THE precept that emerges from this flux seems barren enough indeed, till the transfiguring process of creation has proved it to be fertile. 'You shall not for some slight profit of convenience or utility depart from standards set by history or logic; the loss will be greater than the gain. You shall not drag in the dust the standards set by equity and justice to win some slight conformity to symmetry and order; the gain will be unequal to the loss.' This and little more will be found inscribed upon the tables. We shall learn, none the less, that the commandment, jejune and vague upon its face, has unsuspected implications, hidden and unknown energies, that are revealed to the devout, to those who seek in very truth and with all their might to follow and obey. Between these poles there is room for an infinitude of nice adjustments, all swayed in some degree by the attraction of the force that radiates from either end. As new problems arise, equity and justice will direct the mind to solutions which will be found, when they are scrutinized, to be consistent with symmetry and order, or even to be the starting points of a symmetry and order theretofore unknown. Logic and history, the countless analogies suggested by the recorded wisdom of the past, will in turn inspire new expedients for the attainment of equity and justice."

CARDOZO—*The Growth of the Law*, 88 and 89.



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AMONG NEW DECISIONS

Action or Suit — *relief to party to illegal transaction.* In Re Brown, 147 Kan. 395, 76 P. (2d) 857, 116 A.L.R. 1012, it was held that the rule that courts will not grant judicial relief to either of two participants in an illegal, immoral, or dishonorable transaction does not apply where the one complained of is an official of the court, who seeks to retain to his own use certain moneys he acquired by his official misconduct. In such a case the court's primary concern is to maintain its own integrity and the probity of its officials.

Annotation: Rule that denies relief to party in pari delicto as applicable to transaction with a public officer or an official of the court. 116 A.L.R. 1018.

Adoption — *death action by child.* In McKeown v. Argetsinger, — Minn. —, 279 N. W. 402, 116 A.L.R. 398, it was held that an adopted child, given all the rights of a natural child by statute, Mason's Minn. Stat. 1927, §§ 8629, 8630, has the rights of a natural child as next of kin for whose benefit an action for wrongful death may be brought.

Annotation: Action for death of adoptive parent, by or for benefit of adopted child. 116 A.L.R. 405.

Attorneys — *expenses incurred as affecting amount of contingent fee.* In Manzo v. Dullea, 96 F. (2d) 135, 116 A.L.R. 1241, it was held that subtraction of the expenses incident to litigation from the amount recovered is not required before computing the fee of an attorney employed to collect the claim forming the subject of litigation for a percentage of any amount recovered where no provision is made with regard to the expenses.

Annotation: Expenses incurred by attorney as affecting amount of his compensation under contingent fee contract. 116 A.L.R. 1244

Attorneys — *insanity as defense to disbarment.* In Re Patlak, 368 Ill. 547, 15 N. E. (2d) 309, 116 A.L.R. 627, it was held that insanity of an attorney, later restored to reason, at the time when he took money from clients for services which he did not perform, is not a bar to the entry of an order striking his name from the list of attorneys, the issue not being as to his responsibility for his acts but as to his present fitness to remain on the roll of attorneys.

Annotation: Insanity or other impairment of mental faculties of attorney at time of conduct upon which proceeding for disbarment or discipline is predicated, or at time of such proceeding, as a defense or matter in mitigation. 116 A.L.R. 632.

Automobile Accident — *intervening cause.* In Butts v. Ward, — Wis. —, 279 N. W. 6, 116 A.L.R. 1441, it was held that the negligence of a motorist colliding with a car approaching

from the opposite direction when he turned to the left to avoid a truck negligently left standing at night in the traveled portion of the highway without lights and flares as required by statute is not such a superseding or intervening cause as to release the owner and driver of the truck from liability for injuries to occupants of the approaching car.

Annotation: Negligence of one leaving automobile insufficiently lighted in street or highway as proximate cause of accident as affected by intervening negligence of third person not imputable to person injured. 116 A.L.R. 1452.

Automobiles — *negligence of insurance agent.* In Vert v. Metropolitan L. Ins. Co. — Mo. —, 117 S. W. (2d) 252, 116 A.L.R. 1381, it was held that a life insurance company is not answerable for the negligent operation of an automobile by one whose regular employment was to collect premiums on industrial insurance in assigned territory, but who was at liberty, at his option, to sell life insurance, when the accident occurred while he was returning to his home from a trip to see a life insurance prospect, such trip not being one which the company required him to make, or one made for the purpose of performing any duty which the company required of him.

Annotation: Insurance company's responsibility for torts of agent causing physical injury to person or damage to property. 116 A.L.R. 1389.

Boycott — *picketing for purpose of.* In Goldfinger v. Feintuch, 276 N. Y. 281, 11 N. E. (2d) 910, 116 A.L.R. 477, it was held that peaceful picketing of the place of business of a merchant selling the product of a manufacturer who is a party to a labor dispute, for the purpose of asking the public to refrain from purchasing such product, is permissible.

Annotation: The boycott as a weapon in industrial disputes. 116 A.L.R. 484.

Carriers — *who is passenger.* In Horne v. Southern Ry. Co. 186 S. C. 525, 197 S. E. 31, 116 A.L.R. 745, it was held that testimony that a person went to a railroad flag station before train time with the avowed object of becoming a passenger from such station to the town where he resided, and that he followed minutely the customary methods of flagging the train, is sufficient to carry to the jury the question whether he was a passenger when struck by the train as it ran past the flag station.

Annotation: When relation of carrier and passenger commences as between railway or interurban company and one intending to take train or car not at a regular stopping place. 116 A.L.R. 756.

Constitutional Law — *prohibiting house-to-house canvassing.* In Prior v. White, — Fla. —, 180 So. 347, 116 A.L.R. 1176, it was held that a municipal ordinance which decrees it to be a nuisance, punishable by fine or imprisonment, for a person to visit a private residence to solicit orders for merchandise when not requested to do so by the owner or occupant, is not a justifiable exercise of the police powers of the city, and therefore deprives persons engaging in such business of their constitutional rights.

Annotation: Validity of municipal ordinance declaring nuisance, or otherwise prohibiting or restricting, house-to-house canvassing by peddlers, itinerant merchants, solicitors, etc. 116 A.L.R. 1189.

Constitutional Law — *prohibiting use of grade stallions.* In State v. Withrow, — Wis. —, 280 N. W. 364, 116 A.L.R. 1310, it was held that a statute operating to prohibit the use of grade stallions for public service

is not a permissible exercise of the police power, where it is established that although colts of purebred stallions bring better prices, grade stallions are as likely to transmit their individual qualities of health, soundness, conformation, and disposition as purebreds, and that purebreds are as likely as grades to possess undesirable qualities and as likely to transmit them, that the progeny of grade sires are as good workers and as long lived as progeny of purebreds, that progeny of purebreds are as subject to disease as those of grades, and that as many good colts are bred from grades as from purebreds.

Annotation: Constitutionality, construction, and application of statutes designed to regulate breeding of animals in order to improve, or prevent deterioration of, stock. 116 A.L.R. 1315.

Covenants and Conditions — *effect of gift conveyance.* In Boone Biblical College v. Forrest, — Iowa, —, 275 N. W. 132, 116 A.L.R. 67, it was held that the fact that a conveyance was a gift and not for a valuable consideration does not render inapplicable the rule that conditions subsequent, working a forfeiture of the estate conveyed, are not favored.

Annotation: Character as a conditional limitation or condition subsequent, or as a covenant, of provision or recital in deed as to purpose for which land is to be used, as affected by fact that deed was voluntary or for a merely nominal consideration. 116 A.L.R. 76.

Criminal Law — *waiver of right to preliminary examination.* In State v. Boehm, — N. D. —, 279 N. W. 824, 116 A.L.R. 547, it was held that an accused who enters a plea of not guilty without moving to quash or set aside the information upon which he is arraigned may not thereafter raise the question that he has had no preliminary examination upon the crime charged.

Annotation: Defendent's plea to indictment or information as waiver of lack of preliminary examination. 116 A.L.R. 550.

Divorce — *division of community property.* In Schwartz v. Schwartz, — Ariz. —, 79 P. (2d) 501, 116 A.L.R. 633, it was held that where the statute of a state in which the law of community property exists provides that on entering a decree of divorce the court shall order such division of the property of the parties as to the court shall seem just and right, consideration may be given, in ordering a division, to any gifts or donation of property of the community made by one spouse to the other.

Annotation: Gifts or advances previously made or trusts set up out of community property as affecting statutory division of community property in connection with divorce. 116 A.L.R. 638.

Divorce — *effect of agreement as to suit money.* In Campbell v. Campbell, — Md. —, 198 A. 414, 116 A.L.R. 939, it was held that the provision of a separation agreement entered into between a husband and wife at a time when the wife had declared an intention to sue for divorce, that in any action for divorce she would not make any claim for alimony or counsel fees, does not preclude an allowance of counsel fees to the wife in a suit brought by the husband under a subsequently enacted statute making voluntary separation for a period of five years ground for divorce.

Annotation: Validity, construction, and application of contract or stipulation waiving wife's right to counsel fees in event of suit for divorce or separation. 116 A.L.R. 947.

Evidence — *conversation through interpreter.* In Gulf, Colorado & S. F.

Ry. Co. v. Giun, — Tex. —, 116 S. W. (2d) 693, 116 A.L.R. 795, it was held that one may not be permitted to testify to what another said in a conversation carried on through an interpreter selected by the former.

Annotation: Right of witness to testify to another's statements out of court made in conversation through an interpreter. 116 A.L.R. 800.

Evidence — *presumption of self-preservation.* In Vance v. Grohe, — Iowa, —, 274 N. W. 902, 116 A.L.R. 332, it was held that where the driver of an automobile and others have testified to the circumstances of a collision of the automobile with the side of a moving train at a highway crossing, it is error to instruct the jury that in determining whether the driver was driving recklessly they may take into consideration the natural concern of the driver for his own safety and the instinct of self-preservation.

Comment Note: Direct evidence as to what took place at time of accident as displacing presumption arising from instinct of self-preservation that one was acting with concern for own safety. 116 A.L.R. 340.

Evidence — *receipt of consideration.* In Finegan v. Prudential Ins. Co. of America, — Mass. —, 14 N. E. (2d) 172, 116 A.L.R. 535, it was held that a recital in a written instrument of the receipt of "one dollar and other valuable consideration," or that it is executed "for value received," is prima facie evidence of the receipt of a consideration.

Annotation: Effect of words "value received" or similar words in written instrument, other than negotiable instrument or sealed instrument, to create presumption or make prima facie case of consideration. 116 AL.R. 545.

Executors and Administrators — *statutory sale of Homestead.* In Re Estate of Anderson v. Axberg et al., — Minn. —, 279 N. W. 266, 116 A.L.R. 82, it was held that a statute providing that a decedent's realty may be sold under license of the probate court when the personal estate is insufficient to pay debts, legacies, and expenses of administration, or the court shall deem it for the best interests of the estate and of all persons interested therein, but that the homestead shall not be sold except on the ground that it is for the best interests of all persons interested therein and with the consent of the life tenant therein, and that the proceeds shall be considered real estate for purposes of distribution, does not operate to subject a homestead to the payment of debts, legacies, or administration expenses, although the personal estate is insufficient for the purpose.

Annotation: Construction and application of statutory provisions permitting the sale of homestead for purpose of paying decedent's debt or legacies. 116 A.L.R. 85.

Exemptions from Tax — *Boy and Girl Scouts.* In Tharpe v. Central Georgia Council of Boy Scouts of America, 185 Ga. 810, 196 S. E. 762, 116 A.L.R. 373, it was held that under the pleadings and the evidence, it appeared that the land used by the plaintiff as a place for recreation and instruction of boys who were members of the organization of Boy Scouts was an institution of purely public charity, within the meaning of the law exempting such institutions from taxation.

Annotation: Exemption from taxation of property of Boy Scout or Girl Scout organization. 116 A.L.R. 378.

Garnishment — *interest in joint bank account.* In Fairfax v. Savings Bk. of Baltimore, — Md. —, 199 A. 872, 116 A.L.R. 1334, it was held that a husband's interest in a bank deposit purporting to be "in trust for" him-

self and his wife, "joint owners, subject to the order of either, the balance at the death of either to belong to the survivor," is too contingent and uncertain to be the subject of an attachment under a statute providing that any kind of property or credits belonging to the defendant may be attached.

Annotation: Joint bank account as subject to attachment, garnishment, or execution by creditor of one of the joint parties. 116 A.L.R. 1340.

Garnishment — *nonresident principal defendant.* In Dickson v. Simpson, 172 Tenn. 680, 113 S. W. (2d) 1190, 116 A.L.R. 380, it was held that a statute authorizing the garnishment of a resident debtor of a nonresident who is indebted to a nonresident principal defendant upon whom process is served by publication does not afford due process of law, in that the res impounded is not one in which the principal defendant has any interest subject to attachment or garnishment so as to confer upon the courts of the state in which the garnishment proceedings are instituted jurisdiction in rem without personal service of process upon or appearance by the principal defendant.

Annotation: Resident or foreign corporation doing business within state as subject to garnishment because of indebtedness to nonresident who in turn is indebted to nonresident principal defendant. 116 A.L.R. 387.

Guardian and Ward — *liability for loss through investment.* In Re Eigenmann, — Ind. —, 14 N. E. (2d) 585, 116 A.L.R. 432, it was held that in the absence of a statute designating the form of investments permitted to guardians or requiring the prior approval of a court, the fact that a guardian has invested funds of his ward in the stocks or bonds of a private corporation without an order of court does not impose the risk of the investment on the guardian.

Annotation: Liability of trustee, guardian, executor, or administrator for loss of funds as affected by failure to obtain order of court authorizing investment, in absence of mandatory statute. 116 A.L.R. 437.

Insurance — *apportionment of disability annuity.* In Wells v. Guardian L. Ins. Co. of New York, 213 N. C. 178, 195 S. E. 394, 116 A.L.R. 130, it was held that the disability annuity which under the provisions of a life insurance policy is payable annually, on the anniversary of the first payment, during such disability prior to the maturity of the policy, is not apportionable upon the death of the insured before the expiration of a year since the making of the last preceding payment.

Annotation: Apportionment of annuities in respect of time. 116 A.L.R. 135.

Insurance — *intentional killing as accidental death.* In Harper v. Jefferson Standard L. Ins. Co. — W. Va. —, 196 S. E. 12, 116 A.L.R. 389, it was held that under a policy of life insurance providing for the payment of double the amount named in the face thereof, where the death of the insured results through "external, violent, and accidental means," a prima facie case is made upon showing that the insured, without any misconduct or aggression on his part, and by an act of another person unforeseen by him, is killed by a gunshot wound.

Annotation: Accident insurance: death or injury intentially inflicted by another as due to accident or accidental means. 116 A.L.R. 396.

Landlord and Tenant — *breach of covenant to repair.* In Stone v. Sullivan, — Mass. —, 15 N. E. (2d) 476, 116 A.L.R. 1223, it was held that to

justify a lessee in abandoning the lease premises because of the lessor's breach of covenant to make outside repairs, the breach must amount to a constructive eviction.

Annotation: Rights and remedies of tenant upon landlord's breach of covenant to repair. 116 A.L.R. 1228.

Lease — *termination in case of sale.* In Diamond Cattle Co. v. Clark, — Wyo. —, 74 P. (2d) 857, 116 A.L.R. 912, it was held that to justify the exercise of a right reserved in a lease to terminate the tenancy in case of sale, a contract of sale must have been entered into in good faith.

Annotation: Construction of provision for termination of lease in event of sale of property. 116 A.L.R. 931.

Master and Servant — *child of employee injured by servant.* In Mi-Lady Cleaners v. McDaniel, 235 Ala. 469, 179 So. 908, 116 A.L.R. 639, it was held that the immunity of a parent from liability at the suit of an unemancipated minor child for personal injuries resulting from the parent's negligence or wilful wrong does not extend to the parent's employer.

Annotation: Liability of employer for injury to wife or child of employee through latter's negligence. 116 A.L.R. 646.

Master and Servant — *distributor of petroleum products as independent contractor.* In Gulf Refining Co. v. Brown, 93 F. (2d) 870, 116 A.L.R. 449, it was held that a distributor of the products of a petroleum refining company consigned to him under a contract providing that he should furnish a storehouse, that he should devote his best efforts to the sale and distribution of the products in the territory assigned to him, that sales were to be made for cash unless credit sales were authorized in writing by the consignor, that daily statements of sales and deliveries should be mailed to the consignor and daily remittances made of the money received from cash sales and of signed receipts for credit sales, that the consignee should have the entire charge of the management and operation of the business, should pay all license fees, and furnish all necessary equipment, that he should furnish his own helpers and pay the expenses of conducting the business, that the consignor should not in any event be responsible for the negligence of the consignee or his employees, that the consignee and his employees should not be deemed to be the employees of the consignor, that the consignee should carry compensation and public liability insurance for himself and his employees, and that the contract should not be assignable and should be subject to termination by either party on ten days' notice, is not an independent contractor so as to relieve the refining company from liability for the negligence of his employees in selling for kerosene a mixture of kerosene and gasoline.

Annotation: Status of gasoline and oil distributor or dealer as agent, employee, independent contractor, or independent dealer as regards responsibility for injury to person or damage to property. 116 A.L.R. 457.

Money Lenders — *statement required by Small Loans Act.* In Equitable Industrial Loan Soc., Inc. v. Kelly, 124 Conn. 346, 199 A. 766, 116 A.L.R. 1357, it was held that a statement, given pursuant to the requirement of the Small Loans Act that a statement be given to the borrower at the time of the loan which clearly shows "the dates upon which payments are to be made if the loan is repayable in instalments, otherwise the time of its maturity," is not insufficient because a clause accelerating the date of maturity on default in payment of an instalment does not

immediately follow the one stating when the monthly instalments are due.

Annotation: Requisites and sufficiency of statement by lender to borrower, at time of loan or of receipt of payment, to comply with small loan statutes in that regard. 116 A.L.R. 1363.

Mortality Tables — *effect of lack of normal health.* In Paine v. Gamble Stores, Inc. — Minn. —, 279 N. W. 257, 116 A.L.R. 407, it was held that the admissibility of mortality tables in evidence in an action for wrongful death is not affected by the fact that the deceased was not in normal health at the time of his death.

Annotation: Admissibility and weight of mortality tables as evidence as affected by lack of normal health. 116 A.L.R. 416.

Municipal Corporations — *notice of claim.* In Richmond v. James. — Va. —, 197 S. E. 416, 116 A.L.R. 967, it was held that a notice of injury required by statute to be given within sixty days after accrual of a right of action against a municipal corporation as a condition of the right to sue is not too late in a case where illness is claimed to have been caused by the leakage of gas through a service pipe left uncapped when the meter was removed, because not given within sixty days from the removal of the meter; but the damages recoverable are in such case properly limited to those sustained within the sixty days preceding the giving of the notice.

Annotation: Continuing character of municipality's negligence and injury or damage therefrom as affecting requirement of notice to municipality. 116 A.L.R. 975.

Negligence — *failure to keep gasoline station in safe condition.* In Wingrove v. Home Land Co. — W. Va. —, 196 S. E. 563, 116 A.L.R. 1197, it was held that a member of the family or an invited guest of a customer of a gasoline filling station is an invitee of the operator of the station, and may recover for injuries sustained thereon occasioned by the negligent failure of such operator to keep the station in a reasonably safe condition for the uses to which it is devoted.

Annotation: Liability of owner or operator of public gasoline filling station for injury to person or damage to property. 116 A.L.R. 1205.

New Trial — *disqualification unknown to juror.* In Reed v. Commonwealth, 273 Ky. 607, 117 S. W. (2d) 589, 116 A.L.R. 673, it was held that the selection as jurors, in a prosecution for homicide, of persons who were second cousins of the alleged victim, is not ground for granting a new trial where the jurors filed affidavits to the effect that neither knew of the alleged kinship at the time of selection and not until the filing of the affidavit, and that they had considered the case solely on the evidence introduced, and neither the accused nor his counsel filed an affidavit in support of their claim that neither knew of, nor by the exercise of diligence could have discovered, the alleged relationship.

Annotation: Disqualifying relationship unknown to juror as ground of new trial in criminal case. 116 A.L.R. 679.

Oath — *effect of lack of jurat.* In June v. School District No. 11, 283 Mich. 533, 278 N. W. 676, 116 A.L.R. 581, it was held that the lack of a jurat to an oath of allegiance to the state and Federal Constitutions and of fidelity to duty, the taking of which is made by statute a condition of the validity of a contract of employment of a public schoolteacher, does not render it fatally defective so

as to preclude enforcement of the contract.

Annotation: Necessity and sufficiency of officer's jurat or certificate as to oath. 116 A.L.R. 587.

Officers — *liability for acts of subordinates.* In Bird v. McGoldrick, 277 N. Y. 492, 14 N. E. (2d) 805, 116 A.L.R. 1059, it was held that a public officer is accountable for fees which his subordinates have failed to collect or to turn over, although he did not have the power to choose or to remove such subordinates, where a statute in terms makes such officer "responsible for the general conduct of the business of his office and for the faithful discharge of the duties of the deputy and assistant clerks," and makes it his duty to collect and receive all the fees and account for and pay the same into the city treasury monthly.

Annotation: Liability of public officer or his bond for defaults and misfeasance of his clerks, assistants, or deputies. 116 A.L.R. 1064.

Officers — *removal for membership in terroristic society.* In Wilson v. Council of City of Highland Park, 284 Mich. 96, 278 N. W. 778, 116 A.L.R. 352, it was held that membership in a terroristic secret society of a political character, to which members are required to take an oath of supreme allegiance, is not ground for the removal of a member of a city council from office, where no misconduct in office is shown.

Annotation: Membership in or affiliation with religious, political, social, or criminal society or group as ground of removal of public officer. 116 A.L.R. 358.

Oil and Gas Lease — *apportionment of royalties among joint lessors.* In Louisiana Canal Co. v. Heyd, — La. —, 181 So. 439, 116 A.L.R. 1260, it was held that the owner of a strip of land four rods wide and half a mile long, constituting one eightieth of the lands embraced in an oil and gas lease covering such land and that of another person by whom the lease was executed, who by accepting his pro rata share of the delay rentals has accepted and ratified the lease, is entitled to share ratably in the royalties from oil extracted from such other's tract of land.

Annotation: Rights in respect of rents or royalties earned under an oil and gas lease or other grant of mineral rights in which owners of different tracts join as lessors. 116 A.L.R. 1267.

Paupers — *reimbursement by relative of.* In Bismarck Hospital and Deaconess Home v. Harris, — N. D. —, 280 N. W. 423, 116 A.L.R. 1274, it was held that a third person who furnishes relief to one unable to support himself, without application for relief first made under the Poor Law to the public authorities, may recover therefor in an action brought directly against the person made legally liable by a statute declaring it to be the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability.

Annotation: Statute imposing duty to maintain or aid indigent relative as supporting action by third person. 116 A.L.R. 1281.

Pledge — *conversion of pledged stock.* In Moore v. Waterbury Tool Co. 124 Conn. 201, 199 A. 97, 116 A.L.R. 564, it was held that a pledgee of shares of stock does not convert them by having them transferred on the books of the corporation.

Annotation: Right of pledgee of corporate stock to have it transferred to him on books of company. 116 A.L.R. 571.

Public Money — *use for golf course.* In Daytona Beach v. King, — Fla. —, 181 So. 1, 116 A.L.R. 880, it was held that a contract between a city and an individual that if the latter would erect a clubhouse and improve a golf course owned by him, and admit thereto citizens and visitors to the city upon payment of a reasonable fee, the city would pay him each year for ten years a sum of money equal to the total sum of the state, county, and municipal taxes assessed against such property, is ultra vires as providing for the expenditure of municipal funds for a private purpose.

Annotation: Power of county or municipality to exempt from taxation or otherwise aid or subsidize private enterprises conducted for recreational, exhibition, or entertainment purposes. 116 A.L.R. 889.

Robbery — *to recover money lost in illegal game.* In People v. Rosen, — Cal. (2d) —, 78 P. (2d) 727, 116 A.L.R. 991, it was held that the element of felonious intent essential to the crime of robbery is lacking where one seeks the redemption of money lost by him at an illegal game, even in the absence of a statute giving to a loser a right of action to recover money so lost, and although the money reclaimed may not have been the identical money won from him.

Annotation: Offense of larcency, embezzlement, robbery, or assault to commit robbery, as affected by defendant's intention to take or retain money or property in payment of, or as security for, a claim, or to collect a debt, or to recoup gambling losses. 116 A.L.R. 997.

Search and Seizure — *requiring holder of liquor license to furnish key to enforcement officer.* In Manchester Press Club v. State Liquor Commission, — N. H. —, 200 A. 407, 116 A.L.R. 1093, it was held that a

regulation of the State Liquor Commission requiring a club licensed to sell liquors to members and guests to furnish the commission's law enforcement department with a key for entrance to the premises at any time does not violate constitutional provisions against unreasonable search.

Annotation: Validity of particular statutory provisions or other regulations as to inspection, entry, or search of places licensed for sale of intoxicating liquors. 116 A.L.R. 1098.

Succession Taxes — *unpaid charitable gifts.* In Taft v. Commissioner of Internal Revenue, 304 U. S. —, 82 L. ed. (Adv. 920), 58 S. Ct. 891, 116 A.L.R. 346, it was held that promises to pay money to charitable institutions, the only consideration for which was a stipulated application of the money received, but which are enforceable by state law, do not constitute claims against the estate "for an adequate and full consideration in money or money's worth" within the provision of the Federal Estate Tax Law (§ 303 (a) (1) of the Revenue Act of 1926) allowing the deduction of such claims.

Annotation: Deductibility in computing estate or succession tax of amount remaining unpaid at decedent's death upon his pledge to religious, charitable, or educational organization. 116 A.L.R. 351.

Taxes — *exemptions.* In American Newspapers, Inc. v. McCardell, — Md. —, 197 A. 574, 116 A.L.R. 1108, it was held that machinery and materials owned by a newspaper publisher and used in printing its newspapers are not entitled to the benefit of an exemption from taxation of property used in manufacturing.

Annotation: Who is a manufacturer within tax exemption provisions. 116 A.L.R. 1111.

Taxes — *property sold under conditional sale.* In Automatic Voting Machine Corp. v. Maricopa County, — Ariz. —, 70 P. (2d) 447, 116 A.L.R. 320, it was held that as between parties to a conditional sales contract, the buyer in possession of the subject of sale is the one liable for taxes thereon.

Annotation: Who is liable for tax in case of conditional sale, or option for purchase, of personal property. 116 A.L.R. 325.

Trees — *cutting in highway.* In Rabiner v. Humboldt County, — Iowa, —, 278 N. W. 612, 116 A.L.R. 89, it was held that an injunction will not issue at the suit of an abutting owner to restrain a county and its agents from cutting trees within the boundaries of a highway, where they are acting strictly within their statutory powers.

Annotation: Right to enjoin removal of or interference with trees in highways. 116 A.L.R. 95.

Trial — *comment on assertion of privilege.* In Sumpter v. National Grocery Co. — Wash. —, 78 P. (2d) 1087, 116 A.L.R. 1166, it was held that a claim of privileged communication made by one party may not be made a subject of comment before the jury by the other.

Annotation: Attorney's comment on opposing party's refusal to permit introduction of, or to offer, privileged testimony, or to permit privileged witness to testify. 116 A.L.R. 1170.

Trial — *incompetent evidence in trial without jury.* In Birmingham v. State, — Wis. —, 279 N. W. 15, 116 A.L.R. 554, it was held that the improper admission on a trial on a charge of statutory rape, before a judge sitting without a jury, of testimony tending to show that defendant had committed crimes having no connection with that for which he was being tried, is not prejudicial er-

ror where the record reveals that the trial court was cognizant of the rule which renders evidence of other crimes incompetent to prove a defendant guilty of a particular crime charged and stated that it considered some of the testimony irrelevant, incompetent, and immaterial and would try the case solely on the relevant testimony, and there is competent evidence sufficient to support the finding of guilt.

Annotation: Reception of incompetent evidence in criminal case tried to court without jury as ground of reversal. 116 A.L.R. 558.

Trial — *instructing as to mitigating circumstances.* In Otts v. State, — Tex. Crim. Rep. —, 116 S. W. (2d) 1084, 116 A.L.R. 1454, it was held that where the defendant in a criminal prosecution does not testify in the case, and where the state in developing its case in chief introduces, in connection with a confession or admission of the defendant, an exculpatory statement which if true would entitle him to an acquittal, the jury should be told that he is entitled to a verdict of not guilty unless such exculpatory statement has been disproved or shown to be false by other evidence in the case.

Annotation: Duty of court to instruct regarding exculpatory or mitigating statements in confession or admission introduced by prosecution. 116 A.L.R. 1459.

Wills — *accretions to stock set aside by executor to satisfy legacy.* In Re Mead, — Wis. —, 279 N. W. 18, 116 A.L.R. 1127, it was held that where an executor, empowered to satisfy a general legacy with stock instead of money, has set aside stock for the purpose, the legatee becomes entitled to accretions subsequent to the date of the segregation although prior to the date when the legacy is payable.

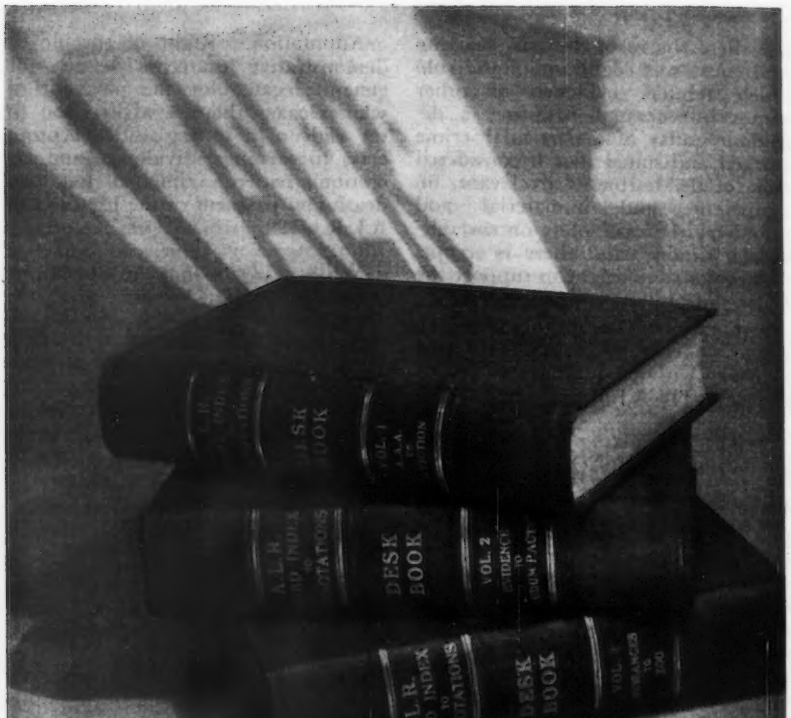
Annotation: Right of specific or demonstrative legatee or devisee (or general legatee for the payment of whose legacy there is a direction to set aside or a setting aside of property) to earnings, dividends, and accretions between time of testator's death and payment of the legacy. 116 A.L.R. 1129.

Wills — *bequest conditioned on services.* In Re Trybom, 277 N. Y. 106, 13 N. E. (2d) 596, 116 A.L.R. 359, it was held that the right to a bequest made by a lawyer to an associate, of his office furniture and library and a one-half interest in all pending legal matters "in consideration of the services to be rendered in the probate of this my last will," is unaffected by the refusal of his executrix to permit the rendition of such services.

Annotation: Validity, construction, and effect of provisions of will to effect that legacy or devise is made in consideration of, or in contemplation of, services to be rendered after testator's death, in carrying on testator's business, or in administering or caring for estate. 116 A.L.R. 361.

Witnesses — *contradiction of testimony as to age of defendant.* In General Motors Acceptance Corp. v. Edwards, — N. C. —, 197 S. E. 613, 116 A.L.R. 1217, it was held that evidence of written and oral declarations by defendant that he was more than twenty-one years of age at the time of entering into a contract is admissible in an action thereon to contract the testimony of defendant and his witnesses that he was a minor at the time.

Annotation: Admissibility and weight on the issue of majority at the time contract was made, of one's statements at that time or before regarding his age. 116 A.L.R. 1223.



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THE HUMOROUS SIDE

Which Would You Prefer? A certain lawyer had a peculiar habit. He was the sort of a fellow, who would always scribble down on the back of his business cards, the name and telephone number of any new girl he happened to meet.

This lawyer happened to be good looking and somewhat of a social climber, and as a result of his popularity, his business cards were always cluttered with female names and telephone numbers.

One day a client walked into the attorney's office. "Remember me," he began. "You prosecuted a case for me about four months ago."

"Of course, I remember you, Mr. Jorgan," he replied. "Please sit down."

The client obliged and sat down. He said he had a great case for the lawyer where he could possibly earn a large fee—and, for half an hour, he explained the nature of the law-suit. The attorney listened with great interest and said he would be only too happy to take charge of the litigation. The client stood up, shook hands with the lawyer upon his departure, but suddenly a thought struck him, and he turned back to the attorney.

"Would you mind giving me one of your cards?" he requested. "I may want to get in touch with you in the next few days or so."

"Certainly," said the lawyer, reaching into his pocket for one of his cards.

"But," murmured the client, "do you mind making it a blonde this time?"

—*Legal Chatter.*

Today. It is a gloomy moment in history. Not for many years—not in the lifetime of most men who read this—has there been so much grave and deep apprehension; never has the future seemed so incalculable as at this time.

In our own country there is universal commercial prostration and panic, and thousands of our poorest fellow citizens are turned out against the approaching winter without employment, and without the prospect of it.

In France the political caldron seethes and bubbles with uncertainty; Russia hangs, as usual, like a cloud, dark and silent upon the horizon of Europe; while all the energies, resources and influences of the British Empire are sorely tried, and are yet to be tried more sorely, in coping with the vast and deadly disturbed relations in China.

It is a solemn moment, and no man can feel an indifference—which, happily, no man pretends to feel—in the issue of events.

Of our own troubles no man can see the end. They are, fortunately, as yet mainly commercial; and if we are to lose only money, and by painful poverty to be taught wisdom—the wisdom of honor, of faith, of sympathy and of charity—no man need seriously to despair.

And yet the very haste to be rich, which is the occasion of this widespread calamity, has also tended to destroy the moral forces with which we are to resist and subdue the calamity.

* * *

When worrying too much about today, you will be interested to know that the above article is reprinted from *Harper's Weekly*, Vol. I, Page 642, of the issue dated October 10, 1857, 81 years ago.

That's Easy. *Wally*: "Gee, pop, there's a man in the circus who jumps on a horse's back, slips underneath, catches hold of its tail, and finishes up on the horse's neck."

Father: "That's easy. I did all that the first time I rode a horse." —*The Recorder.*

The Time, Please? It happened on the day coach of one of our long cross-country trains. The young man leaned across the

aisle toward the figure almost completely hidden by a newspaper.

"Will you please give me the correct time?" he asked.

There was no reply, nor any indication that the query had been heard. Thinking that perhaps the man behind the newspaper was a little deaf, or that the noise of the train had drowned his question, the young man raised his voice a little. "Would you mind giving me the correct time?"

Still no reply from the motionless figure, and there wasn't a waver from the newspaper.

The young man took a deep breath. He had not lost courage. In a voice loud enough to be heard at the other end of the car, he spoke for the third time: "I say, will you tell me the correct time?"

The newspaper dropped suddenly. Bespectacled eyes bored impatiently into the friendly eyes of the young man. "My friend," began their owner, "I don't intend to tell you the time of day for which you have asked me three times. If I told you what time it was, you would have some reply to make about the weather, or some other useless topic of conversation, and then I would agree with you, or disagree, depending upon what your comment was in the first place, and then we would get to talking about weather in general, or about something else, and the first thing I know, you would be sitting over here with me, or I over there with you, and we would find that we were interested in the same hobbies, and the more we'd talk, the more we'd begin liking each other, and by tomorrow when we would get off the train, we would be slapping each other on the backs, and calling each other 'pals,' and when our families would meet us at the train, I would introduce you to mine, and you would introduce me to yours, and I would invite you over to visit, and you would come, again and again, and find yourself in love with my daughter, and finally tell me that you wanted to marry her, and, by jiggers, I won't have that, because I refuse to have for a son-in-law a fellow who can't afford to have a watch of his own."

And the newspaper again went up with emphasis. —*From the Speakers Library.*

We've Wondered About This. It seems that near the end of the fortieth day the Ark hit against the protruding top of an electric light pole, which poked a hole in the bow. Noah sent his pet dog down and the dog, to stop the leak, poked his nose in the hole, which is the reason that dogs' noses are always cold.

But the dog soon became tired, so Mrs. Noah went down and put her foot in the hole, which is the reason women always have cold feet.

Finally, however, as the water kept coming a little, Noah himself went down and sat on the hole, which is the reason that men always stand with their backs to a fire.

The Recorder.

Oh, Doctor. *Doctor*: "Humph! I can't quite diagnose your case. I think it's drink."

Patient: "Oh, I see. Now, look here, doctor. Would you like me to come again when you're sober?"—*The Recorder.*

A Fast Worker. *Sailor*: "Kid me if you like, but I'll bet that ten minutes after we hit port I'll be walking down the street with a beautiful woman on each arm."

Marine: "G'wan! There never was a tattoo artist who could work that fast."

The Recorder.

A Daniel Webster Story. In Concord, Mass., a little girl was once on her tardy way to school, crying in anticipation of disgrace and possible punishment, when a deep voice by her side said: "What is troubling you, my child?" Between her sobs Annie explained. "I will write a note to your teacher, asking her to excuse you," said the stranger, kindly. The little girl protested. He did not know her teacher. It would be of no use. But the big, black-haired man had written a few words on a page of his notebook, and, tearing out the leaf, handed it to the child. "If you give your teacher that, I think she will excuse you," he said, smilingly. Still unbelieving, the little girl handed the scrap of paper to her teacher, who read its contents and promptly excused the delinquent. The note read: "Will Miss ———— excuse Annie for being late, and oblige her most obedient servant, Daniel Webster."

Co-officers. The election in one of our central Kentucky counties was over, the votes had been counted, the sheriff elect was to hold the first public office ever entrusted to a member of his family. He went home with the news of his election.

After he had proudly told of his success, one of his children, aged 7 asked:

"Pa, are we all sheriffs now?"

"No" he replied, "just me and your ma."

Ky. Bar Assn. Journal.

A Very Good Reason Why Mr. Zimmerman Won't Pay That Tax. The following self-explanatory letter was made public today at the office of the deputy city collector's office in Brooklyn:

"Dear Deputy City Collector:

"May I inform you [for the third time] that I have made every effort to persuade Mr. Leon Zimmerman to meet his obligations to the city of New York, especially the retail sales tax. And for the third time may I inform you he refused to listen to me.

"The first time you requested the tax receipts Mr. Leon Zimmerman was dead. He was dead the second time you write. He is still dead.

"But don't despair. Try me again when the next instalment is due. Perhaps we'll have more luck. Or, better still, suppose you run down to the Maspeth cemetery [path 3, plot 33] and see if you can't persuade him to see your side of it.

[Signed] "EDWARD ZIMMERMAN."

—Exchange.

By Instalments. "Here's my bill," said the lawyer. "Please pay down $100.00 and $25.00 a week thereafter for ten weeks."

"Sounds like buying an automobile," said the client.

"I am," returned the attorney.

—Legal Chatter.

A Different Case. In a case in which a man was accused of forgery, the counsel for the defense drew from a witness the following statement:

"I know that the prisoner cannot write his own name."

"All that is excluded," said the judge; "the prisoner is not charged with writing his own name, but that of some one else."

—Exchange.

From a Student's Note Book. Our professor in Domestic Relations made the statement, "It is now generally accepted that sterility is inherited."

In sales class, "The bottle is frequently passed around at farm auctions to make the bidding more spirited."

Early this Spring one student complained that the room was too hot. "Well," answered the prof, "do you want me to serve beer?" (This is in Milwaukee.)

After a poorly prepared recitation the professor asked the student, "Are you going to be a shyster, or the other kind of a lawyer."

Student: "What other kind?"

The perennial joke of one prof concerns a recommendation he gave a student: on the bottom he wrote, "caveat emptor."

If the musical comedy spirit were carried into the class room we might find the professor in contracts leading a chorous of "Let's Call the Whole Thing Off" as an introduction to the study of Rescission.

Contributed by Roy Packler,
Milwaukee, Wis.

Expensive Election. B. M. Biggers, a candidate in the late demented primary, in filing a report of his campaign expenses (required by law) includes the following in his detailed report:

Punched on 37 punchboards.
Bought 84 bottles of beer.
231 Coca Colas.
Shook hands 8,499 times.
Kissed 73 babies and one woman (probably his wife).
Killed two horses and one jassack and wore out one auto in traveling 72,609 miles.
Got the promise of 3,000 votes, received 595 of them.
Loaned two-bits 105 times.
Walked 722 miles.
Missed 35 meals.
Told 423 lies.
Was lied about 1,749 times.
Went broke 4 times.
Got beat once.
Politics is hell.
Goodbye.

—The Plain Dealer.

Contributor: L. W. Bower,
Camden, Ark.

Pore Folk Lore. Nightfall overtook a traveler in the Kentucky mountains. He was forced to seek lodging in a mountain cabin occupied by a large family. He noticed that one of the smaller children was addressed as "Ciny." He realized that this must be an abbreviation for a longer name and was curious to know what the real name was. He inquired of the mother the real name, she replied:

"You see, stranger, there was a lawyer stayed with us one night and went off leaving one of his books, and I found that child's name in that book, her real name is Petty Larceny but we just call her Ciny for short."

—*Ky. Bar Journal.*

Would This Be Libel? The dictation was: "Mr. A.————, attorney on the other side says he will dismiss the suit against you."

As written by the steno:

"Mr. A.———— is turning on the other side and says he will dismiss the suit against you." —*Exchange.*

Perplexing Cases. A newly elected Justice of the Peace made his first report on the activities of his office, the report is as follows:

Commonwealth vs. J. Jones ----------$2.35
Commonwealth vs. Mary Howes ----- 4.25
Commonwealth vs. Dick Simms ------ 6.00
Commonwealth vs. Jack Brown ------ 3.65

Some of them cases was in the night time and some in the day time. I have charged what I thought was right. Them was troublesome cases.

Yours truly,
T. A. J. P.

—*Ky. Bar Assn. Journal.*

Mitigating Circumstances. The jury had found the defendant guilty of burglary.

"Have you anything to say before I sentence you?" asked the Judge.

"Only that I'm not guilty," replied the defendant, "and that I object to being identified by a fellow who had his head under the bedclothes all the time while I was in the room." —*Exchange.*

Corporation Case. A very prominent member of the Jefferson County Bar, who has now passed on, at one time had a matter coming up for oral argument before the Court of Appeals. The time set for the argument arrived, but the Jefferson County attorney had not appeared. The Court heard the opposition and adjourned. Some thirty or forty-five minutes later the Jefferson County attorney appeared and sought to have the matter reopened. In support of his motion to reopen the matter he said, "My tardiness, your honors, was caused by circumstances beyond my control and could not have been by me foreseen. I came to Frankfort on the C. and O. scheduled to arrive in plenty of time; the train was late, and the C. and O. Railroad Company should be blamed rather than myself."

To this the Court replied, "The attorney will please be aware that the C. and O. Railroad Company is not running this Court."

Then quick as a flash the attorney replied, "very well, your honor, next time I will come on the L. & N."—*Ky. Bar Journal.*

A Good Cause. The accused, who was charged with having stolen $55 from an acquaintance, failed to show up on the day set for trial. His attorney, however, put in an appearance and requested an adjournment on behalf of his client.

"And why," asked the judge, "does he want an adjournment?"

"Because he's in training," the attorney replied.

"In training for what?"

"For a fight."

"I'm not interested in that," said the judge.

"Well, I am," said the attorney. "He's fighting for my fee." The adjournment was granted.—*Exchange.*

So What. Arguing before the Supreme Court, as to whether jig-saw puzzles were a game and taxable under the Federal revenue laws, a government attorney, who was in favor of taxation, said that there were rules for jig-saw puzzles which could be waived in the same manner that the Supreme Court sometimes waives rules for argument.

"But the court is not a game," Justice Hughes remarked.

"Yes, but it's a puzzle," replied the attorney.—*Exchange.*

Equally Greek. This happened in a Southern Kentucky County in the days before the typewriter, when all pleadings were in the handwriting of the attorneys. A lawyer of very great ability in jury trials had as an adversary a lawyer from a much larger city. This visiting lawyer by his every manner was seeking to impress the Court and his fellow attorneys with his profound learning. He prepared and filed a pleading written in a language unintelligible to the old time local lawyer. The older lawyer studied the pleading carefully then withdrew to a small side table and wrote industriously

for twenty minutes. All he wrote was to make some meaningless marks over the paper. This was filed and handed to the visitor who when he looked at it said, "I can't read this." The older lawyer replied "Neither can I read yours." "But mine is written in Latin," said the city lawyer, to this the local attorney replied, "Mine is written in Chocktaw."

—*Kentucky Bar Journal.*

Ocean Sued for Sand. Suit has been brought against Ocean County to collect for sand, valued at $6,000, supposed to have been taken by the county for road purposes without the consent of the owners. The complaint said 2,400 cubic yards of sand were taken from property in Little Egg Harbor Township.—Contributed.

Dirty Enough. Sue to halt dumping of sewage in creek through Three Oaks. Objecting to the sanitary condition of Door creek, which flows through the village of Three Oaks, Mary Schrader and Andrew M. Conrad Thursday filed in the Berrien county circuit court bill of complaint seeking an injunction restraining the village from discharging sewage into the ---------- firm of White and White, of Niles, are attorneys for the complainants.

Contributor: Stuart B. White,
Niles, Mich.

A Job Well Done. The most popular man in a western town had got into a difficulty with a disreputable tough who was the terror of the place, and had done him up in a manner eminently satisfactory to the entire community. It was necessary to vindicate the majesty of the law, however, and the offender was brought up for trial on a charge of assault with intent to kill. The jury took the case, and were out about two minutes, when they returned.

"Well," said the old judge in a familiar off-hand way, "what does the jury have to say?"

"May it please the court," responded the foreman, "we, the jury, find that the prisoner is not guilty of hittin' with intent to kill, but simply to paralyze, and he done it."

—*Retold Tales.*

Attorney Unearths A Legal Curio. A Woodstock attorney in examining a title Friday found in the chancery cause ended some years ago in the Circuit Court of Shenandoah County an account rendered against the estate of the decedent which is unique. The bill was approved by the court. The account is as follows:

"Trips and waiting on and furnishing bread and other nourishment the month of March, 1922, when he had the la grippe at his home, $15.

"Board and bed and trouble with his relatives, $12.

"Feather bed I had to burn after his death, $5.

"Feather bolster and feather pillow had to burn, $3.

"Clothes I had to furnish to lay him out in, $5.

"Linen and bed spread I had to destroy, $5.

"Ice and milk I had to go and get for him, $2.

"Feather pillow and linen case put in the coffin, $2.

"Help I had to have in the house, $3.

"Three trips I made in the Bees, $3.

"Trips to look after the place, $5.

"Nursing and trouble during his last illness, $100."

There is no explanation as to what the trips to the "Bees" meant.

Contributed by Fred C. Abbott,
Richmond, Va.

Politician Gives Thanks. Although his race was unsuccessful, A. S. (Jack) Moore, who ran for coroner in the recent Greene County primary, remembered those who voted for him with the following card of thanks in the Greensboro Herald-Journal.

"I desire to thank the intelligent, honest and upright 96 voters who cast their ballots for me in Wednesday's primary.

"The 2,321 voters who cast their ballots against me, can go jump in a lake.

"Thank you faithful 96!

"Let me know when you need some painting, or when you want to take a sociable drink. I don't let politics interfere with my friendship in a business or social way."

—*Exchange.*

Ask Her Yourself. An old Irishman was an important witness in a case, and both he and the lawyers who were trying to examine him were having a hard time of it. The witness was very slack and frowzy in his personal appearance and this heightened the effect of his blarney immensely. He perspired freely under the ordeal of examina-

tion, and was evidently wishing it well over, when the door at the rear of the courtroom opened, and in came a little sharp-eyed old Irishwoman. The witness saw her, and a look of intense relief spread over his features as he blurted out: "There! There is me old woman come in. Ax her some of your dum foolish questions. She kin take care o' ye."—*Retold Tales.*

Interpretation. Lawyer: Have you conscientious scruples about serving as a juror where the penalty is death?

Boston Talesman: I have.

Lawyer: What is your objection?

Boston Talesman: I do not desire to die.

—*Exchange.*

The Only Way. Judge: This is the 16th time I have had you before me for some misdemeanor or other. I hope I shan't see you any more.

Culprit: Why, Judge—are you retiring?

—*Exchange.*

A Hard Insurance Risk. "Is this the Fidelity Insurance Company?"

"Yes, ma'am, it is. What can we do for you?"

"I want to arrange to have my husband's fidelity insured!"—*Exchange.*

Southern Negro Psychology. In a recent case before the National Labor Relations Board in Houston, Texas, a Negro witness responded to questions propounded by counsel as follows:

Q. Alum, were you a member of both local unions?

A. Yas, suh.

Q. Then how do you account for the fact that you are not working now for respondent company?

A. Boss, dat's always been a question mark to me.

Q. So you were trying to ride both horses by belonging to both unions. Now, Alum, isn't it a fact that you tried to belong to both unions and that the two organizations got so far apart that you have lost out?

A. Well, suh, I think I'm still riding both them hosses.

Contributor: Rolland Bradley, Houston, Texas.

Reputation Nil. Judge: Do you consider this defendant a reliable man? Has he a good reputation for truth and veracity?

Witness: Well, to be honest with you, Your Honor, that man has to get somebody else to call his hogs at feeding time. They won't believe him.—*Exchange.*

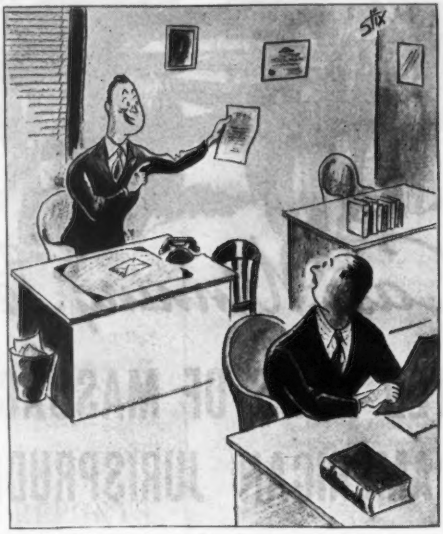
Answers From a Bar Exam. An applicant for admission to the bar gave the following answer to a question involving a suit for libel arising out of an editorial concerning a candidate for political office:

"'Dirty' is a term that is extremely common in speaking of candidates for office—in fact, the term has lost any real meaning because it has been applied so often and so much, and is to be expected in a political campaign.

"When anyone is running for office, they let down the bars to slander and libel.

"The law does not allow persons to collect damages for libilious (sic) remarks when parties are running for political office. The reason, of course, is that all the polititions (also sic) would be in court right after election.

"He was of the opposite political faith and malice will be presumed."—*Exchange.*



"Hot Dog! I Got My First Case! The Law School Is Suing Me for Back Tuition!"

Lawyers Beware. "Now that you are through college, what are you going to do?" one of his relatives asked.

"I shall study law and become a great lawyer," replied the youth.

"The legal profession is pretty crowded already, isn't it?" ventured the relative.

"Can't help that," snapped the youth. "I shall study law, and those who are already in the profession will have to take their chances; that's all!"—*Exchange.*

English Justice. Judge: You know, the law presumes you to be innocent.

Culprit: Then why all these elaborate preparations to convict me?—*Exchange.*

A Fair Answer. Lawyer (harrassing witness): I have my opinion of you, sir.

Witness: Well, you can keep it. The last opinion I had from you cost me $100.

—*Exchange.*

Reasonably Priced. "It seems to me that $100 is a very exorbitant fee for obtaining a divorce."

"It is our usual charge, sir, when the suit is not opposed. It is more if there is opposition to overcome."

"But I paid the minister only $10.00 for marrying me. Your charge seems out of proportion to his."

"It does not seem so to me, sir. Just compare the relative benefits arising from the respective services."

—*Exchange.*

Fair Enough. Judge: How do you account for the fact that the watch was found in your pocket?

Light Fingers: Your honor, life is made up of inexplicable mysteries, and I trust your honor will so instruct the jury.

—*Exchange.*

Late. MacGregor and MacPherson decided to become teetotalers, but MacGregor thought it would be best if they had one bottle of whisky to put in the cupboard in case of illness.

After three days MacPherson could bear it no longer and said: "MacGregor, ah'm not verra weel."

"Too late, MacPherson, ah was verra sick m'sel' all day yesterday."

The Earth Mover (Aurora, Ill.)

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